

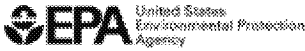


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Assumption Request Package

What needs to be submitted to EPA?

The requirements for a complete assumption request package are described in [EPA's Section 404\(g\) regulations \(40 CFR 233.10-233.14\)](#). A state or tribal package requesting 404(g) assumption shall include:

1. A letter from the Governor;
2. Complete program description;
3. Attorney General's statement;
4. Memorandum of Agreement (MOA) with EPA Regional Administrator;
5. MOA with Secretary of Army (through Chief U.S. Army Corps of Engineers);
6. All applicable state or tribal statutes and regulations administering the program.

The state or tribe should submit a **letter from the governor** or tribal equivalent requesting program assumption and formally transmitting the assumption request package to EPA.

A **complete program description** ([40 CFR 233.11](#)) includes but is not limited to: scope and structure of program, including jurisdiction, activities regulated, anticipated coordination, permit review criteria, and scope of permit exemptions; procedures for permitting, administrative review and judicial review; structure and organization of state or tribal agency responsible for program administration; funding and staffing levels; anticipated workload; copies of permit application forms, permit forms, and reporting forms; compliance evaluation and enforcement programs; description of the waters under state jurisdiction and those under the U.S. Army Corps of Engineers (Corps) jurisdiction; and Best Management Practices proposed to satisfy farm, forest, and temporary mining roads exemption provisions.

An **Attorney General's statement** ([40 CFR 233.12](#)) includes but is not limited to: citations of specific statutes, administrative regulations and judicial reviews demonstrating adequate authority; legal analysis of the effect of state or tribal laws regarding private property takings; certification of the authority of each state or tribal agency to administer the program; and analysis of authority over Indian lands if applicable (not assuming authority over Indian lands does not constitute partial assumption).

A **MOA with EPA Regional Administrator** ([40 CFR 233.13](#)) includes but is not limited to: classes and categories of permits for which EPA waives review; provisions for state or tribe reporting on program implementation; EPA and state

or tribe roles and coordination procedures regarding compliance monitoring and enforcement; and provisions for modification of the MOA including transfer or withdrawal.

A **MOA with Corps** (40 CFR 233.14) includes but is not limited to: a description of waters of the U.S. over which Corps retains jurisdiction; procedures for transfer of pending permit applications upon program approval; and identification of any Corps general permits to be assumed by the state or tribe, including a plan for transferring responsibility and identification of current enforcement cases. The Corps retains jurisdiction over tidal waters and waters presently used, or that could be used, for interstate or foreign commerce and wetlands adjacent to these retained waters. Refer to the August 2018 Department of Army Memorandum to the Corps for information regarding how the Corps is identify waters to be retained.

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